IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 118 of 1983
with
CROSS OBJECTIONS No. 50 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJ STATE ROAD TRANSPORT CORPN - Appellant(s)
Versus
RIJUMAL SAMATMAL & 8 - Defendant(s)

==========

Appearance :
MS MAYA DESAI for MR MD PANDYA for Appellant(s) : 1,
MR HM LATHIA for Defendant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7,1.2.8
- for Defendant(s) : 0.0.0

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/11/2006

ORAL JUDGMENT

1. The Gujarat State Road Transport Corporation has approached this Court by filing this appeal under Section

110-D **o**f the Motor Vehicles Act to challenge the judgment and award made by the Motor Accident Claims Tribunal (Main) Junagadh District at Junagadh dated 1st March, 1982 in MACP No.66 of 1981. The learned Judge has awarded a sum of Rs.35,000/- together with interest at the rate of 6% per annum from the date of application till realization and also the proportionate costs. The appeal has been filed on the ground that the award is on higher side and it is also required to be reduced. It is also their ground that the award under the head of pain, shock and suffering is not legal and it is required to be quashed.

2. The original claimants are the relatives of deceased Kanaiyalal Rajumal, aged about 18 years. Claimants No.1 and 2 are the parents, whereas rest of the claimants are close relatives. The deceased met with an accident and lost his life on 18th December, 1980 in a vehicular accident which took place at around 10:00 a.m. On that day, the deceased was travelling on his motorbike at the relevant time and he was knocked down by the driver of the offending vehicle, namely, respondent No.2 - Vinodrai Tuljashanker who drove the Bus belonging to the appellant. He died almost instantaneously. In view of the same, the claimants approached the Claims Tribunal by filing petition under Section 110-A of the Act for claiming compensation. The claim was of Rs.1 lakh.

3. The claim petition was resisted by the appellant and respondent No.9, the driver of the S.T. Corporation by filing joint written statement at Exh.9. According to them, there was no negligence on the part of respondent No.9. They also pleaded that the claim was exaggerated one. According to them, the accident occurred only because the deceased himself lost control over his motorbike, and therefore, respondent No.9 cannot be held liable for causing the death.

4. Both the sides produced relevant evidence to substantiate their respective cases before the Tribunal. At the end of hearing, the Tribunal came to conclusion that respondent No.9 i.e. driver of the offending vehicle was negligent and due to his negligence, the accident occurred. Further, it came to conclusion that the original claimants were entitled to receive a sum of Rs.35,000/- by way of compensation. It is this award which is now under challenge.

5. The claimants have also filed cross objections seeking enhancement of the award amount.

6. I have heard Ms. Maya Desai, learned advocate for the appellant and I have also perused the record of the case. So far as the original claimants are

concerned, Mr. H.M. Lathia has filed his appearance and also cross objections and states before me that the clients have taken away the papers and he has no instructions to appear in the matter. He has, therefore, filed retirement purshis along with relevant documents, which is taken on record. However, there is no endorsement granting no objection to Mr. Lathia and in that view of the matter, I cannot permit him to retire, but then he states that since he does not have any instructions, he is unable to argue the case.

7. It is clear from the record of this case that the deceased on the fateful day died in a vehicular accident and he was aged about 18 years.

8. So far as the aspect of negligence is concerned, the Tribunal has adequately dealt with it and the discussion is contained in Paragraph 8 of the judgment. The Tribunal has considered the topography of the area and has given the finding that the driver of the appellant was responsible for causing accident. This finding is not under challenge before this Court. In view of the same, there is no need to re-appreciate the evidence on this count. This is not at all required, since I am in agreement with the finding of the Tribunal on this issue.

9. So far as the quantum is concerned, the Tribunal has considered different amounts which could be awarded under different heads. According to Ms. Desai, under the head of pain, shock and suffering, no compensation could have been awarded in the instant case. In respect of her submission she has placed reliance on the decision rendered by the Division Bench of this Court in the case of **Union Co-operative Insurance Society Ltd., v. Bhartiben Wd/o of Hasmukhlal Narmadashankar & Ors. reported in 1978 (Vol. XIX) pg.820**. Now the discussion in the judgment on the aspect of quantum shows that the Tribunal has awarded Rs.18,000=00 towards the economic loss. It is also stated that amongst the claimants there will be two groups i.e., applicants no. 1 and 2 and they will form one group and it will have to be separated from the other set of claimants. The Tribunal has awarded Rs.5,000=00 to each group for the untimely death of the deceased. This can be considered as conventional amount. However, the Tribunal has put it under the head of pain, and suffering. The total amount of compensation awarded by the Tribunal is Rs.35,000=00. This appeal is only to challenge the award made under the head of pain and suffering and it is restricted to Rs.18,000=00. It is true that in the decision referred to and relied on by Ms. Desai, it is laid down that under this head, compensation can be awarded only if the claimant is able to show that due to witnessing the accident of a close

relative, some recognizable psychiatric illness has developed. In the instant case, there is no such evidence on record. However, considering the fact that though it is termed as compensation under the head of pain and suffering, it is actually for loss of expectation of life and, therefore, Ms. Desai's submission cannot be accepted. This brings me to the cross-objections filed on behalf of the original claimants. The cross-objections have been restricted to Rs.10,375=00. The main ground on which enhanced compensation is sought for is on the ground of income of the deceased. However, the judgment of the Tribunal shows that with meager investment of Rs.1,000=00 to Rs.1,500=00, it was difficult for the deceased to generate income of Rs.800-Rs.850/- as profited difference which he could divert Rs.700=00 towards the maintenance of the family. In view of the same, I do not find any merit in the cross objections also.

10. The net result is that the appeal as well as cross objections are dismissed with no order as to costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

mrpandya

/phalguni/